

**Pittco Engineered Systems, Inc. and Aluminum,  
Brick and Glass Workers International Union.**  
Case 11-CA-16102

March 31, 1995

**DECISION AND ORDER**

BY CHAIRMAN GOULD AND MEMBERS COHEN  
AND TRUESDALE

Upon a charge and an amended charge filed by the Union on July 5 and October 25, 1994, respectively, the General Counsel of the National Labor Relations Board issued a complaint on October 27, 1994, against Pittco Engineered Systems, Inc., the Respondent, alleging that it has violated Section 8(a)(1), (3), and (5) of the National Labor Relations Act. Although properly served copies of the charge, the amended charge, and complaint, the Respondent failed to file an answer.

On March 3, 1995, the General Counsel filed a Motion for Summary Judgment with the Board. On March 6, 1995, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Summary Judgment**

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated January 6, 1995, notified the Respondent that unless an answer were received by January 13, 1995, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

The Respondent is now, and has been at all times material, an Ohio corporation, with a facility located at Greensboro, North Carolina, where it is engaged in the fabrication of aluminum products. Based on a projection of its operations since about December 7, 1993, at which time the Respondent commenced its oper-

ations, the Respondent will annually receive at its Greensboro, North Carolina facility goods and raw materials valued in excess of \$50,000 directly from points outside the State of North Carolina, and will annually sell and ship from its Greensboro, North Carolina facility products valued in excess of \$50,000 directly to points outside the State of North Carolina. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

On or about December 7, 1993, the Respondent purchased the assets of Architectural Metals Division, a unit of PPG Industries, Inc. (Architectural Metals), and since that date has been engaged in the same business operations at the same location, selling the same product to substantially the same customers and has employed the same employees previously employed by Architectural Metals. By virtue of these operations, the Respondent has continued as the employing entity and is the successor of Architectural Metals, which is now, and has been at all times material, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

On about June 8, 1994, the Respondent laid off, and thereafter refused to reinstate its employee, James Blackwell, because he joined, supported, or assisted the Union, and engaged in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and in order to discourage employees from engaging in such activities or other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

The following employees constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All production and maintenance employees of Pittco Engineered Systems, Inc., Greensboro, North Carolina; excluding all other employees, salesmen, sales clerks, office clerical employees, guards and supervisors as defined in the Act.

At all times since on or before January 12, 1993, and continuing to date, the Union has been the representative for the purpose of collective bargaining of the employees in the unit and, by virtue of Section 9(a) of the Act, has been, and is now, the exclusive representative of the employees in the unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

Commencing on or about December 7, 1993, and continuing to date, the Union has requested, and is requesting, the Respondent to recognize and bargain collectively with respect to rates of pay, wages, hours of

employment, and other terms and conditions of employment as the exclusive representative of all employees of the Respondent in the unit.

Commencing on or about January 5, 1994, and at all times thereafter, the Respondent did refuse, and continues to refuse, to recognize and bargain collectively with the Union as the exclusive collective-bargaining representative of all employees in the unit in that the Respondent, on or about June 8, 1994, unilaterally, without notification to or bargaining with the Union, changing its layoff policy; on about June 22, 1994, unlawfully withdrew recognition and continues to refuse to recognize the Union as the exclusive collective-bargaining representative of its unit employees; and on or about June 22, 1994, refused and continues to refuse to bargain collectively with the Union as the exclusive representative of its unit employees.

#### CONCLUSIONS OF LAW

By laying off and refusing to reinstate James Blackwell, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and (1) and Section 2(6) and (7) of the Act. By unilaterally changing its layoff policy, unlawfully withdrawing recognition from the Union, and refusing to recognize and bargain with the Union, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(3) and (1) by laying off and refusing to reinstate James Blackwell on about June 8, 1994, we shall order the Respondent to offer him immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and to make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent shall also be required to remove from its files any and all references to the unlawful discharge, and to notify the discriminatee in writing that this has been done.

Furthermore, having found that the Respondent unilaterally changed its layoff policy on or about June 8, 1994, we shall order the Respondent to restore the status quo ante regarding layoffs and make whole the unit

employees adversely affected by these actions for any losses incurred by virtue of its unlawful conduct. Backpay shall be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enf. 444 F.2d 502 (6th Cir. 1971), with interest in the manner prescribed in *New Horizons for the Retarded*, supra.

Finally, having found that the Respondent, on about June 22, 1994, withdrew recognition and has refused to bargain collectively with the Union as the exclusive collective-bargaining representative, we shall order the Respondent to recognize and bargain in good faith with the Union as the exclusive collective-bargaining representative of the unit employees.

#### ORDER

The National Labor Relations Board orders that the Respondent, Pittco Engineered Systems, Inc., Greensboro, North Carolina, its officers, agents, successors, and assigns, shall

##### 1. Cease and desist from

(a) Laying off or refusing to reinstate employees because they joined, supported, or assisted the Aluminum, Brick and Glass Workers International Union, or engaged in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or in order to discourage employees from engaging in such activities or other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

(b) Unilaterally changing its layoff policy, unlawfully withdrawing recognition from the Union, or otherwise refusing to recognize and bargain collectively with the Union as the exclusive collective-bargaining representative of all employees in the unit. The unit includes the following employees:

All production and maintenance employees of Pittco Engineered Systems, Inc., Greensboro, North Carolina; excluding all other employees, salesmen, sales clerks, office clerical employees, guards and supervisors as defined in the Act.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

##### 2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer James Blackwell immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, with interest, as set forth in the remedy section of this decision.

(b) Remove from its files any and all references to the unlawful discharge, and notify the discriminatee, in writing, that this has been done.

(c) Restore the status quo ante regarding its layoff policy and make whole, with interest, all unit employees adversely affected by this action for any losses incurred by virtue of the unlawful conduct, as set forth in the remedy section of this decision.

(d) On request, recognize and bargain in good faith with the Union as the exclusive collective-bargaining representative of the unit employees.

(e) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, time-cards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Post at its facility in Greensboro, North Carolina, copies of the attached notice marked "Appendix."<sup>1</sup> Copies of the notice, on forms provided by the Regional Director for Region 11, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(g) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

#### APPENDIX

#### NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

<sup>1</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL NOT lay off or refuse to reinstate employees because they joined, supported or assisted the Aluminum, Brick and Glass Workers International Union, or engaged in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or in order to discourage employees from engaging in such activities or other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

WE WILL NOT unilaterally change our layoff policy, unlawfully withdraw recognition from the Union, or otherwise refuse to recognize and bargain collectively with the Union as the exclusive collective-bargaining representative of all employees in the unit. The unit includes the following employees:

All production and maintenance employees of Pittco Engineered Systems, Inc., Greensboro, North Carolina; excluding all other employees, salesmen, sales clerks, office clerical employees, guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer James Blackwell immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and WE WILL make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, with interest.

WE WILL remove from our files any and all references to the unlawful discharge, and notify James Blackwell, in writing, that this has been done.

WE WILL restore the status quo ante with regard to our layoff policy and WE WILL make whole, with interest, all unit employees adversely affected by this action for any losses incurred by virtue of our unlawful conduct.

WE WILL, on request, recognize and bargain in good faith with the Union as the exclusive collective-bargaining representative of our unit employees.

PITTCO ENGINEERED SYSTEMS, INC.